

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
File No. EO-2024-0194, In the Matter of the Application of Southway Storage for
Change of Electric Supplier from The Empire District Electric Company d/b/a
Liberty to White River Valley Electric Cooperative, Inc.

FROM: Alan J. Bax, Industry Analysis Department – Engineering Analysis Dept.

/s/ Alan J. Bax / 03-12-2024
Industry Analysis Division / Date

SUBJECT: Staff Memorandum Recommending Approval of Change of Electric Service
Provider Request

DATE: March 12, 2024

STAFF RECOMMENDATION

The Staff of the Missouri Public Service Commission (“Staff”) recommends that the Missouri Public Service Commission (“Commission”) approve the updated Application of Southway Storage (“Application”) for a Change in Electric Service Suppliers to a proposed new storage facility at the Southwest Corner of State Highway F and US Highway 65, Ozark, Missouri, (“Property”) from The Empire District Electric Company, d/b/a Liberty Utilities (“Liberty”) to White River Valley Electric Cooperative, Inc. (“White River”), concluding that the Application, in total, is in the public interest as this would make the best and most efficient, effective use of existing facilities at the least cost to the Applicant, and preventing an otherwise duplication of facilities should Liberty provide electric service to Southway Storage.

In its Response to the Application, Liberty recommends that the Application be dismissed based on Liberty’s assertion that there is no legal means available to support the Application. In its Response to Application, White River counters with several avenues in Missouri law in its support of the Application. Staff Counsel will provide a legal analysis in its Cover Pleading. The Application meets the filing requirements of 20 CSR 4240-2.060 and 20 CSR 4240-3.140.

OVERVIEW

On December 12, 2023, Mr. Garrett Stancer¹ filed a request to change electric service providers with the Commission in regard to a newly proposed storage facility to be constructed at

¹ On January 9, 2024, an update to the original filed request was made. In this updated filing (the Application), Mr. Stancer was removed as a party to the case and replaced with Southway Storage (“Applicant”).

the Southwest Corner of State Highway F and US Highway 65, Ozark, Missouri, (“Property”). The Property was recently annexed into the city limits of Ozark Missouri, which allows Liberty to be the recognized electric service provider to the Property via its franchise agreement with the City of Ozark. However, the estimated cost to extend Liberty’s service to the Property, which includes crossing US Highway 65, is much greater compared to an extension received from White River that has existing electric facilities routed on the Property.

Liberty filed a Response to the Application on January 12, 2024. Liberty contends that as a result of its franchise agreement with the City of Ozark, the Property now lies in its certificated service area following annexation and that it is not aware of any legal basis to allow White River to begin providing electric service to this Property².

White River also filed its Response to the Application on January 12, 2024. White River makes mention of its ability to provide looped electrical service to the Property at very minimal expense³ due to having existing facilities routed upon it. White River indicates that it provided electric service to a structure in the past (from 1983 to 1994) on the Property that has since been torn down. White River claims that Statute 394.315.2 RSMo (2021)⁴, often referenced as one of three anti-flip laws⁵, would apply in that White River retains the right to provide electric service to the Property.⁶ White River also points out that Liberty’s extension to the Property would necessarily be a duplication of services.

² White River routed a service line on the Property in 1978, previously serving a structure from 1983 to 1994 according to their Response to Staff Data Request No. 0007.

³ White River Response to the Application – Paragraph 12.

⁴ Section 394.315.2 states, in relevant part, that:

...Once a rural electric cooperative, or its predecessor in interest, lawfully commence supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800 and section 394.080, or pursuant to a territorial agreement approved under section 394.312. The public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential and the commission is hereby given jurisdiction over rural electric cooperatives to accomplish the purpose of this section. The commission’s jurisdiction under this section is limited to public interest determinations and excludes questions as to the lawfulness of the provision of service, such questions being reserved to courts of competent jurisdiction.t...

⁵ In addition to Statute 394.315.2 that pertains to electrical cooperative such as White River, there is Statute 393.106.2 RSMo (2021) that pertains to investor owned utilities such as Liberty and Statute 91.025 RSMo (2021) that pertains to municipal electric systems. Collectively, these sections of the Statutes are often referred to as the “anti-flip laws”.

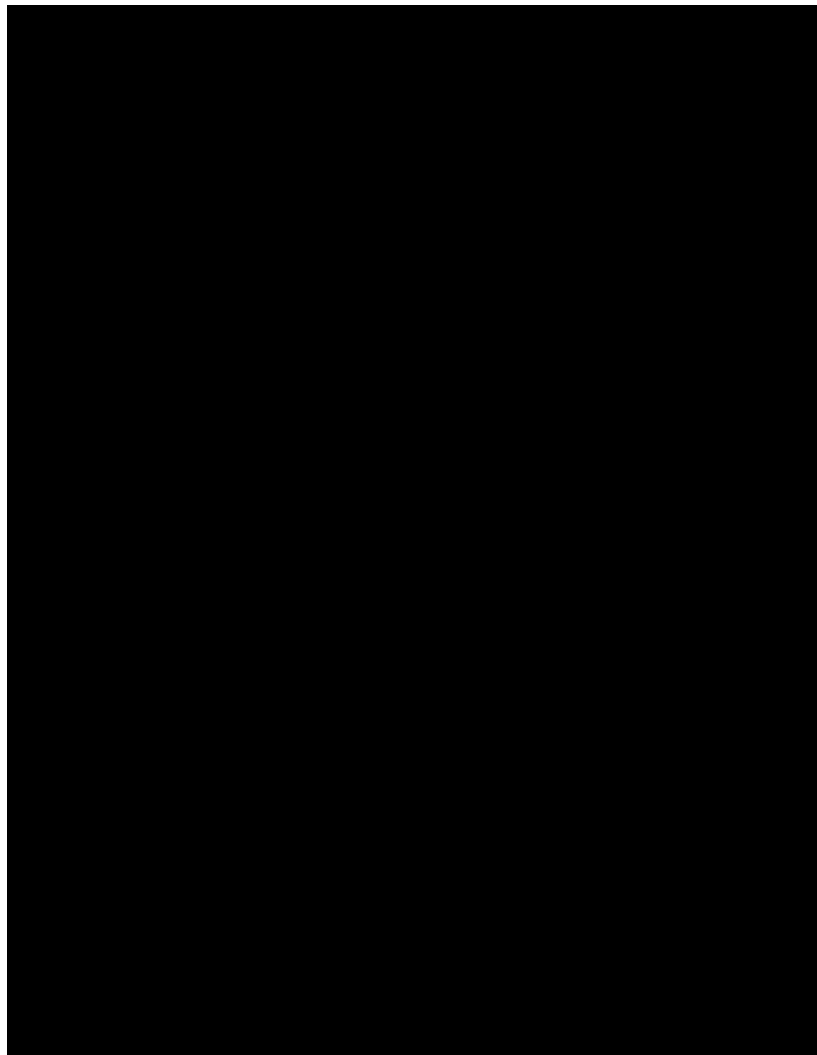
⁶ White River Response to the Application – Paragraph 16.

DISCUSSION

Figure 1 below is a picture of the Property that depicts White River's existing overhead facilities routed along State Highway F (a three-phase line depicted in brown) and a tapped single-phase line routed through the Property, used in providing service to an existing structure on the parcel to the immediate South (also shown in brown). Also illustrated on this parcel to the immediate South of the Property is White River's existing underground line (shown in green). Also illustrated in this picture is the structure White River previously served on the Property between 1983 and 1994. Structures illustrated on the west side of US Highway 65 are served by White River, and those shown on the east side of US Highway 65 receive electric service from Liberty.

Confidential Figure 1 – White River facilities

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In order to provide service to the Property, Liberty will need to cross US Highway 65 overhead and then go underground to the center of the property at an estimated cost of \$88,629.38 according to its Response to Staff Data Request No. 0003 attached to this Staff Recommendation as Schedule AJB-1. Although Southway Storage states in the Application that Liberty will need to bore under US Highway 65, which would add additional costs to the extension, Liberty maintains that boring will not be necessary, nor would this be preferred. The anticipated new load associated with the proposed installation of storage units is insufficient to qualify for any associated credits offered in Liberty's tariffs⁷, attached to this Staff Recommendation as Schedule AJB-2. Despite the high extension cost estimate, and considering this extension would necessarily be a duplication of facilities, Liberty asserts that the anti-flip laws should not apply in this situation. Liberty further states it is not aware of a legal basis to allow White River to provide service to the Property and recommends the Commission dismiss the Application.⁸ Staff Counsel will provide an analysis of Statutes 393.106.2⁹ and 393.130 RSMo 2021 within the legal scrutiny of the Application and the associated utility Responses.

In addition to White River posing that the anti flip-flop laws do apply in this situation, White River notes in its Response to the Application that "...essentially the western and southern portions of the Property are surrounded by White River lines with optionality for electrical service

⁷ Rules and Regulations of The Empire District Electric Company, d/b/a Liberty, PSC MO. No. 6, Section 5, Original Sheet 17c (B.1e), which states in pertinent part,

...The Company will provide overhead or underground distribution facilities to serve an individual non-residential customer at no cost to the customer provided the estimated revenue from three (3) years of electric service equals or exceeds the estimated direct and indirect costs of construction. The Company shall require contributions in aid of construction for the portion of the investment in the total extension of the service to the customer that cannot be supported with the estimated revenues. If the Company is unable to project estimated revenues, the customer shall be required to pay the entire cost of construction...

⁸ Liberty's Response to Application, paragraphs 8-10.

⁹ Section 393.106.2 states, in relevant part, that:

...Once an electrical corporation or joint municipal utility commission, or its predecessor in interest, lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800 and section 394.080, or pursuant to a territorial agreement approved under section 394.312. The public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential. The commission's jurisdiction commission's jurisdiction under this section is limited to public interest determinations and excludes questions as to the lawfulness of the provision of service, such questions being reserved to courts of competent jurisdiction.t...

injection points...”¹⁰ In other words, White River has multiple ways available to it with its existing facilities on and/or near the Property to deliver a much more economical means of providing the requested electric service. In its Response to Staff Data Request No. 0006.1, attached to this Staff Recommendation as Schedule AJB-3, White River indicates that it currently believes its extension will consist of tapping the existing underground line depicted in Figure 1 above at a cost of approximately \$22,500, a cost that will be covered completely by White River. Moreover, Liberty’s extension would essentially be duplicating White River’s capabilities, and at corresponding substantially higher associated cost, which was mentioned above.

In supporting its stance that the public interest would be best served if it would again be the electric service provider to the Property, White River further states that Missouri law supports White River’s permanent service to the Property under the 2021 Amendments recently enacted on this subject which promote more consumer choice for electrical suppliers.¹¹ While not specifically stated, Staff Counsel believes White River is referencing the recently revised Statute 386.800.2 RSMo (2021)¹², in which preference of landowners and prospective electric customers is given priority. This Statute was an integral part of recent cases EO-2022-0190 and EO-2022-0332 in

¹⁰ Paragraph 12 in White River’s Response to Application.

¹¹ White River Response to the Application – Paragraph 14.

¹² Statute 386.800.2 states, in part, that:

...Any municipally owned electric utility may extend, pursuant to lawful annexation, its electric service territory to include areas where another electric supplier currently is not providing permanent service to a structure. If a rural electric cooperative has existing electric service facilities with adequate and necessary service capability located in or within one mile outside the boundaries of the area proposed to be annexed, a majority of the existing developers, landowners, or prospective electric customers in the area proposed to be annexed may, anytime within forty-five days prior to the effective date of the annexation, submit a written request to the governing body of the annexing municipality to invoke mandatory good faith negotiations under section [394.312](#) to determine which electric service supplier is best suited to serve all or portions of the newly annexed area. In such negotiations the following factors shall be considered, at a minimum:

- (1) The preference of landowners and prospective electric customers;
- (2) The rates, terms, and conditions of service of the electric service suppliers;
- (3) The economic impact on the electric service suppliers;
- (4) Each electric service supplier's operational ability to serve all or portions of the annexed area within three years of the date the annexation becomes effective;
- (5) Avoiding the wasteful duplication of electric facilities;
- (6) Minimizing unnecessary encumbrances on the property and landscape within the area to be annexed; and
- (7) Preventing the waste of materials and natural resources....

which the developer preferred to have the rural electric cooperative provide electric service to a proposed new development in an area that had recently been similarly annexed into the exclusive service territory of an investor-owned utility.

White River continued by listing and subsequently evaluating ten factors that were identified by the Commission in a recent Order in Case No. EO-2017-0277.¹³ The Commission considers these ten factors in analyzing the “...meaning of “public interest” for change of supplier [requests]....”

These ten factors, along with Staff’s analysis, are:

(1) Whether the customer’s needs cannot adequately be met by the present supplier with respect to either the amount or quality of power;

While both Liberty and White River are capable of providing an adequate amount and quality of power to the Property, White River has existing facilities available on and near the Property that enables them to propose multiple ways in providing such service at a much greater equitable cost (approximately \$22,500). White River will cover the entirety of these costs. Liberty will have to extend duplicative facilities across a major US Highway at a considerable higher comparative cost (\$88,629.38), a cost to be paid in advance of construction by Southway Storage.

(2) Whether there are health or safety issues involving the amount or quality of power:

Multiple service providers on the same premise has typically been identified as a situation to avoid based on the premise that having a single provider mitigates potential safety issues. There are instances where Liberty and White River both serve structures on the same parcel and Staff is unaware of any reported incidents associated with both White River and Liberty each providing their respective electric service on the same property.

(3) What alternatives a customer has considered, including alternatives with the present supplier;

Liberty and White River both indicate there is no existing Territorial Agreement that includes the Property, nor are there any such discussions between them. While both Liberty and White River have been in consultation with Southway Storage regarding providing respective

¹³ EO-2017-0277 is often referred to as “The Jessop Case”.

electric service extensions, Southway Storage prefers White River due to the excessive cost of Liberty providing duplicative facilities that include crossing a major US Highway.

(4) Whether the customer’s equipment has been damaged or destroyed as a result of a problem with the electric supply:

The Application notes there is currently no electric service being provided to a structure on the Property.

(5) The effect the loss of the customer would have on the present supplier;

Again, there is no electric service currently being delivered to a structure on the Property. Staff notes that the proposed load consists of storage units. The additional load is insufficient to provide any type of associated credit available in Liberty’s tariffs to be applied to the estimated extension costs as previously noted.¹⁴

(6) Whether the change in supplier would result in a duplication of facilities, especially in comparison with alternatives available from the present supplier, a comparison of which could include:

- (i) The distance involved and cost of any new extension, including the burden on others – for example, the need to procure private property easements, and**
- (ii) The burden on the customer relating to the cost or time involved, not including the cost of the electricity itself;**

As noted above, White River has existing facilities on and near the Property that is capable of providing multiple ways of addressing any potential electric service desires of Southway Storage at a considerable lower cost. White River indicated in response to Staff Data Request No. 0006 that it intends to extend its three-phase underground line 700 feet to serve the customer and that it does not need to seek additional easements to do so at a cost of approximately \$22,500, which will be fully covered by White River. Liberty would have to extend duplicative facilities over a major US Highway at a substantially higher comparative cost (\$88,629.38), which will be charged to Southway Storage, unnecessarily burdening them.

¹⁴ Schedule AJB-2 - Rules and Regulations of The Empire District Electric Company, d/b/a Liberty, PSC MO. No. 6, Section 5, Original Sheet 17c (B.1e).

(7) The overall burden on the customer caused by the inadequate service including any economic burden not related to the cost of the electricity itself and any burden not considered with respect to factor (6)(II) above;

Liberty would have to route duplicative facilities across a major US Highway in its provision of service at a much higher comparative cost than White River. White River has existing facilities that can be tapped in various ways in meeting any electric service desires of the Applicant. Southway Storage will be unnecessarily burdened if Liberty is its electric service provider for the reasons stated above regarding its comparatively high extension costs.

(8) What efforts have been made by the present supplier to solve or mitigate problems;

There is no electric service currently being provided to a structure on the Property. As stated above, Liberty maintains it sees no legal means of supporting the Application and recommends dismissal. Both Liberty and White River acknowledge there is no existing Territorial Agreement nor are there any such discussions presently.

(9) The impact the Commission's decision may have on economic development, on an individual or cumulative basis; and

Southway Storage did not specifically address economic development or its plans for developing its property in its application. The City of Ozark has zoned the Property as "O&W" (Office and Warehouse). Staff is not presently aware whether this will factor into this Change of Supplier request.

(10) The effect the granting of authority for a change of suppliers might have on any territorial agreements between the two suppliers in question, or on the negotiation of territorial agreements between the suppliers.

As already stated, both Liberty and White River acknowledged there is not an existing Territorial Agreement that includes the Property, nor are there currently any such negotiations.

Its Staff's opinion, based upon the factors outlined above, that the Application of Southway Storage to have White River be its electric service provider should be approved as being in the public interest. White River has existing facilities on and/or near the Property capable of addressing any electric service desire expressed by Southway Storage, at considerable less cost. Liberty's extension not only would be duplicative but has to cross a major US Highway at

substantially greater expense¹⁵ comparatively and create a situation with multiple utilities having facilities on a single property.

Additionally, Staff notes the relative comparison of the current case to that of Case No. EO-2002-1105. The applicant in that case was building a new home on a property that had been annexed into the City of Smithville, which therefore placed the property in question in the exclusive service territory of Evergy Missouri West's predecessor Aquila, Inc. Its facilities were over a mile from said property, while the respective rural electric cooperative had an existing line near/bordering the property. The Commission did approve the request for a change in electric service providers in this case.¹⁶ Staff also provides notice of the Commission *Report and Order* in Case No. EO-2011-0052, in which it approved the requested change in electric service providers as being in the public interest citing economic development reasons.¹⁷

CONCLUSION

Staff recommends that the Commission approve the Application of Southway Storage, determining that the request for a change in electric service providers from Liberty to White River at a proposed new storage facility located at the Southwest Corner of State Highway F and US Highway 65, Ozark, Missouri is, in total, in the public interest if lawfully allowed. The Application meets the filing requirements of 20 CSR 4240-2.060 and 20 CSR 4240-3.140.

¹⁵ The applicable tariffs allow Liberty to require Southway Storage to pay "a contribution in kind" in conjunction with its construction of proposed extension as provided in its Response to Staff Data Request No. 0003.

¹⁶ Staff Counsel has pointed out in the past that a "Change of Supplier Request" is not appropriate in a situation where there is currently no structure receiving electric service from which to change. For example, Staff Counsel recommended a Territorial Agreement was necessary in such a situation in Case No. EO-2003-0543.

¹⁷ The Commission's *Report and Order* in Case No. EO-2011-0052 states in relevant part,

...Nevertheless, if the Commission does not grant a change of supplier, the line running across Highway 50 will remain and pose a possible safety issue. Further, Cardwell will either shut its doors or, if Cardwell develops the property, it will choose to employ Three Rivers as the supplier for any new structures. This will result in duplicative services. If the Commission grants the change of supplier, Cardwell will remain open and may even expand its operations....



The Empire District Electric Company d.b.a Liberty
 Case No. EO-2024-0194
 Missouri Public Service Commission Data Request - 0003

Data Request Received: 2024-01-24
 Request No. 0003
 Submitted by: Alan Bax, alan.bax@psc.mo.gov

Response Date: 2024-02-13
 Witness/Respondent: Chris Schafer

REQUEST:

Please provide a detailed, itemized estimate of providing the requested electric service to Southway Storage, located at the southwest corner of US Highway 65 and State Highway F near Ozark, MO. Will it be necessary to bore under US Highway 65 in providing service to this property? If the answer is yes, then provide a detailed estimate of providing service both underground and overhead.

RESPONSE:

Boring will not be necessary, nor is it preferred to bore under US Highway 65. Overhead would likely be the option the Company would pursue. The estimated cost for design over Highway 65 to the property then underground to the center of the property is:

Name	Description	Status	Quantity	Labor	Materials	Services	Tools	Overheads	Total Cost
Totals :				\$11,603.69	\$40,804.64	\$6,625.80	\$5,622.07	\$23,973.19	\$88,629.38

THE EMPIRE DISTRICT ELECTRIC COMPANY d.b.a. LIBERTY

P.S.C. Mo. No. 6 Sec. 5 Original Sheet No. 17c

Canceling P.S.C. Mo. No. _____ Sec. _____ Original Sheet No. _____

For ALL TERRITORY

RULES AND REGULATIONS

B. ELECTRIC DISTRIBUTION POLICY, (Continued)

The developer will make full payment of the estimated charges, in excess of one years estimated revenue for the project, in advance of any construction by the Company. When construction is completed, if the actual costs of the extension are less than the estimated costs, the portion of the customer contribution above the actual costs will be refunded to the customer. If actual costs are higher than the estimated costs the customer will not be required to pay more than the estimate.

Upon request, the Company shall install underground services to each mobile home site from an overhead distribution system in accordance with the terms and provisions of Section B.2.c of the Company's filed Rules and Regulations for electric service. A meter pedestal will be located at each mobile home location. The meter pedestal will be furnished, installed, owned and maintained by the Company for a fee.

e Non-residential Customers:

The Company will provide overhead or underground distribution facilities to serve an individual non-residential customer at no cost to the customer provided the estimated revenue from three (3) years of electric service equals or exceeds the estimated direct and indirect costs of construction. The Company shall require contributions in aid of construction for the portion of the investment in the total extension of the service to the customer that cannot be supported with the estimated revenues.

If the Company is unable to project estimated revenues, the customer shall be required to pay the entire cost of construction. All contributions in aid of construction may be required before construction is commenced.

When construction is completed, if the actual costs of the extension are less than the estimated costs, the portion of the customer contribution above the actual costs shall be refunded to the customer. If actual costs are higher than estimated costs, the customer shall not be required to pay more than the estimate. At the end of three (3) years, the portion of the construction cost justified by the actual revenue shall be refunded to the customer. Refund totals shall not exceed the original contribution by the customer.

The Company will not be required to obligate funds to secure private right-of-way for the purpose of making extension of distribution pole lines or other facilities to premises of prospective customers.

2. Distribution Services:

The Company's standard construction will be overhead. However, where feasible from engineering, operational, and economic considerations, new electric service to residential and commercial customers may be installed underground. Installation of facilities shall be made in accordance with the following provisions

a. Temporary Distribution and Service Lines:

The Company shall not be required to provide service to temporary locations, such as for mobile homes, construction sites, etc., even though the line facilities are already in place, unless such customer advances the sum stated in Schedule CA, Credit Action Fees, as a construction payment for the cost of installation and removal of the meter, service, and other necessary facilities. The title to such property shall be and remain in the Company. Should the customer utilize electric service at this location for a period of twelve consecutive months from the date of initial service, the above payment, plus interest as designated by State Law or Commission order, will be refunded to the customer by the Company.

The Company shall not be required to provide electric service to temporary customers at locations that require the extension of the Company's lines unless the full cost of erection and removal, including indirect costs of construction, of the extension be contributed by the customer.

DATE OF ISSUE August 17, 2020 DATE EFFECTIVE September 16, 2020
ISSUED BY Sheri Richard, Director Rates and Regulatory Affairs, Joplin, MO

FILED
Missouri Public
Service Commission
ER-2019-0374; EN-2021-0038;
YE-2021-0041
File No. EO-2024-0194
Schedule AJB-2

Data Response Display - EO-2024-0194 - 0006.1

Request Summary ▾

Submission No.

EO-2024-0194

Request No.

0006.1

Requested Date

3/5/2024

Due Date

3/25/2024

Issue

General Information & Miscellaneous

Company Information**Requested From**

White River Valley Electric Cooperative, Inc. (Electric) (Cooperative)

Richard S. Johnson (rjohnson@whiteriver.org)

Requested By

MO PSC Staff (Other)

Paul Graham (paul.graham@psc.mo.gov)

Alan Bax (alan.bax@psc.mo.gov)

Brief Description

Itemized Estimate Detailing Anticipated Cost of Extension to Southway Storage, including Customer Percentage

Description

In White River's Response to Staff Data Request No. 6, it indicated that its current, most probabilistic plan was to extend its existing underground circuit north to the Property. Please provide an itemized estimate detailing the anticipated charges associated with this proposed extension, and include the intended amount to be the responsibility of Southwest Storage. If White River's plans have changed in regard to extending service to the Property, then please provide that information along with similar detail.

Request Security

Public (DR)

Response Date

3/5/2024

Response

White River estimates this 700-foot, 3-phase extension at ~\$22,500 (labor and materials). Standard underground materials will be used, e.g., conduit, underground cable, junction cabinet, etc. This cost will be covered at 100% by White River. It has been communicated with Southway Storage that they are responsible for: 1) Clearing vegetation on the 10-foot right-of-way. Easement for this has already been obtained. 2) Providing a 40-inch-deep trench for White River's underground cable. It is understood that Southway Storage will complete this work during construction of their facilities given the heavy equipment will be on site for their build at that time.

Objections**Response Security**

Public (DR)

Rationale**CC List**

File No. EO-2024-0194
Schedule AJB-3

